

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)
United States of America,) File No. 19-cr-313
) (ECT/TNL)
)
Plaintiff,)
)
vs.) Minneapolis, Minnesota
) 10:34 a.m.
Santos Gomez Perez,) February 3, 2022
)
Defendant.)

BEFORE THE HONORABLE TONY N. LEUNG
UNITED STATES MAGISTRATE JUDGE
(CRIMINAL MOTION HEARING)

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1 P R O C E E D I N G S

2 IN OPEN COURT

3 (Defendant present)

4 THE COURT: Good morning, everyone. Thank you all
5 for being here. And we're in a little special arrangement
6 with all the microphones for in-person hearings and so
7 forth. Thank you all for being here.

8 I would just remind everyone when you're in a
9 speaking role you can take off your mask and if you're not
10 in a speaking role, you know, it would be preferred if you
11 would keep your mask on.

12 And, Madam Interpreter, are you ready to be sworn
13 in?

14 THE INTERPRETER: Your Honor, I apologize for
15 being late. I'm so very sorry.

16 THE COURT: Okay. I believe there's a saying, Let
17 the person who's not sinned throw the first stone, so I am
18 not throwing any stones.

19 THE INTERPRETER: Thank you, Judge.

20 THE COURT: If you could raise your right hand.

21 (WHEREUPON, the interpreter was sworn.)

22 THE INTERPRETER: I do. Welcome.

23 THE COURT: If you could state your full name and
24 slowly spell your last name, please.

25 THE INTERPRETER: Marianne McEvoy, M-C-E-V-O-Y.

1 THE COURT: And are you Court certified?

2 THE INTERPRETER: Yes, I am, Your Honor.

3 THE COURT: Okay. Thank you very much.

4 And I will go ahead then and formally call the
5 case.

6 This is the United States District Court for the
7 District of Minnesota and the case before the bench is
8 captioned as follows: United States of America versus
9 Santos Gomez Perez. It is Case Number 20-cr-313 (sic).

10 Starting with Mr. Hollenhorst, please identify
11 yourself for the record.

12 MR. HOLLENHORST: Good morning, Your Honor. Tom
13 Hollenhorst for the United States.

14 THE COURT: Nice to see you. And Mr. O'Brien for
15 defense.

16 MR. O'BRIEN: Good morning, Your Honor. Kevin
17 O'Brien for the defendant and I think we can refer to him as
18 Mr. Gomez.

19 THE COURT: Thank you. And nice to see you, Mr.
20 O'Brien.

21 Okay. In light of COVID and in the interests of
22 health again, I'd just ask that maybe you just speak from
23 your seated positions as opposed to the tradition of going
24 to the center podium and wear your masks unless you're in
25 interactive role.

1 And here's the funniest part, I always love to
2 say, and after you're done please wipe off -- clean your
3 spots.

4 So, Mr. Gomez, good morning.

5 THE DEFENDANT: Good morning, Your Honor.

6 THE COURT: Are you and the interpreter hearing
7 okay?

8 THE DEFENDANT: Kind of low. That's kind of
9 quiet. I tried to turn the volume up, but --

10 THE COURT: Is that better? Is that a little
11 better?

12 THE DEFENDANT: Yes. Yes. Now it's good.

13 THE COURT: Do you want to try another headset or
14 are you okay?

15 THE DEFENDANT: I would like to just to make sure
16 it's clear.

17 That's better.

18 THE INTERPRETER: So he's saying that it seems all
19 right now. I think maybe the problem was when we tested it
20 out I was a talking a little more loudly but then once the
21 hearing started I have to talk more quietly. So that might
22 have been part of it.

23 (Off-the-record discussion.)

24 THE INTERPRETER: It seems to be fine now, Your
25 Honor.

1 THE COURT: Is that other headset such that you
2 think we should try to replace it?

3 THE INTERPRETER: Well, it wasn't the headset it
4 was the different receiver. This one is the one that seemed
5 to be problematic because he's actually using the same
6 actual headset that he had before. So maybe --

7 THE COURT: So I wonder if we should mark that
8 one?

9 THE INTERPRETER: Maybe it's like low on
10 batteries.

11 THE CLERK: It looks like --

12 THE COURT: Otherwise I don't want to have to do
13 this every hearing. That's fine we get this covered but it
14 would be nice to get that fixed.

15 Okay. You good, Mr. Gomez?

16 THE DEFENDANT: Yes. I can hear fine.

17 THE COURT: Okay. Very well.

18 Counsel, what I'll do is I'll go through the ECF
19 numbers at first and then we'll proceed with whatever
20 litigation you folks want.

21 And so let's just go with ECF Number 9,
22 government's motion for discovery.

23 Putting expert discovery aside for the moment, is
24 there any objection to the government's request?

25 MR. O'BRIEN: No, Your Honor.

1 THE COURT: Okay.

2 Turning now to the expert discovery. The
3 government has proposed 30 days before trial for its typical
4 expert disclosures and 10 days before trial for rebuttal
5 experts.

6 Defendant has generally asked for expert discovery
7 under Rule 16. Is there an agreement on time for
8 disclosure?

9 MR. O'BRIEN: What you must mentioned is agreeable
10 to the defense.

11 MR. HOLLENHORST: Agreeable to the government,
12 Your Honor.

13 THE COURT: All right. Anything further on that
14 one?

15 MR. O'BRIEN: No, Your Honor.

16 MR. HOLLENHORST: No, Your Honor.

17 THE COURT: Okay. Move on to 48, defendant's
18 motion for production of *Brady* material. Anything further
19 on this one?

20 MR. O'BRIEN: No, Your Honor.

21 MR. HOLLENHORST: Nothing more, Your Honor.

22 THE COURT: 49 is defendant's motion for retention
23 of rough notes. Anything?

24 MR. HOLLENHORST: No, Your Honor.

25 MR. O'BRIEN: No, Your Honor.

1 THE COURT: 50 is defendant's motion for
2 disclosure of 404(b) evidence.

3 Government has proposed disclosure of any 404(b)
4 evidence in three of trial -- or three weeks before trial.
5 Any agreement on this one?

6 MR. O'BRIEN: That's fine with the defense.

7 THE COURT: 51 is defendant's motion for
8 discovery.

9 Defendant requested production of his original
10 Spanish language statement taken on March 15, 2019, by
11 Sergeant Aguirre and Deputy Ferrian of the Ramsey County
12 Jail.

13 Based on the government's responses I think this
14 has happened now, but I'm not sure.

15 MR. O'BRIEN: Yes. Yes, Your Honor. The
16 government has produced the original Spanish statement, but
17 I would -- and I note that the government is still waiting
18 for the translation of that statement into English and I
19 assume that the government will get that to me a couple
20 weeks before trial.

21 THE COURT: Just for the Court's clarification.

22 So you actually have the original in Spanish and
23 you're waiting for an official translation, is that --

24 MR. O'BRIEN: Yes.

25 MR. HOLLENHORST: Yes, Your Honor. If I might say

1 a few words on that.

2 Government Exhibit 4 is, in fact, the Spanish
3 statement of the defendant, which has been provided to the
4 Court and counsel. And it's not of much use to the Court
5 right now, however, I don't think the substance of the
6 defendant's statement is at issue here and I don't think the
7 Court will need a transcript. However, once we get one we
8 will certainly forward it to the Court if the Court wishes
9 to have that.

10 THE COURT: So your belief is my high school
11 Spanish will not suffice?

12 MR. HOLLENHORST: Nor mine.

13 THE COURT: I wouldn't surprise me.
14 You're more proficient, aren't you?

15 MR. O'BRIEN: I heard it. I listened to it. I
16 understood.

17 THE COURT: Yeah, that's very helpful. Thank you.

18 MR. O'BRIEN: Thank you.

19 THE COURT: Again, I'm glad it's a lot better than
20 my high school Spanish.

21 Anything else on this one?

22 MR. HOLLENHORST: No, Your Honor.

23 MR. O'BRIEN: Just, Your Honor, on the chance that
24 the government has put in some body cams of police officers,
25 we'd like to receive that.

1 MR. HOLLENHORST: Your Honor, I did learn today
2 that there might be some body cam footage so we'll look into
3 that and properly disclose that to the defense.

4 There is no video that I'm aware of that pertains
5 to the substance of this motion -- of these motions,
6 however.

7 THE COURT: Okay.

8 MR. HOLLENHORST: So it's more of a production of
9 evidence issue.

10 THE INTERPRETER: Sorry. The interpreter is
11 having a little trouble understanding the prosecutor.
12 Maybe -- Mr. Hollenhorst, yes, closer to the microphone.

13 MR. HOLLENHORST: Should I --

14 THE INTERPRETER: Please repeat that last
15 comment.

16 MR. HOLLENHORST: Yes. I was just saying -- if I
17 could remember what I just said.

18 We don't feel that any body cam footage is germane
19 to this hearing, to these motions, but we would endeavor to
20 produce the body cam footage forthwith.

21 THE COURT: So is it safe to say government may
22 have body cam footage and if it does it will produce to
23 defense timely?

24 MR. HOLLENHORST: Right. And I believe that there
25 is body cam footage of the police when they first entered

1 the property at issue here, 4056 Washington Avenue North,
2 but we do not believe there's any body cam footage that is
3 germane to the defendant's motions. That is the statement
4 made by the defendant at the scene.

5 THE COURT: Okay. Very well.

6 Anything else for the record on that, Mr. O'Brien?

7 MR. O'BRIEN: Your Honor, I would request that if
8 it turns out that there's a colorable argument that that
9 footage does affect the motions hearing that we'd be allowed
10 to reopen.

11 THE COURT: Sure. Yep. If a thought occurs at
12 that time, obviously, you know, take the proper procedures
13 to do that and the Court will be more than happy to consider
14 whatever the additional information and/or arguments are.

15 MR. O'BRIEN: Thank you.

16 THE COURT: Okay. ECF 52. Defendant's motion for
17 suppression of evidence and seizure -- search and seizure.

18 My understanding is that there are two searches at
19 issue, both of them taking place on March 14, 2019, at
20 Olympic Auto Center. Is that correct, folks?

21 MR. HOLLENHORST: Yes, Your Honor.

22 And Government's Exhibit 1 and 2 are the warrants
23 at issue and we would offer them into evidence at this time.

24 THE COURT: First of all, are those the -- with
25 respect to the search and seizure, is that right? It's

1 those two from that day?

2 MR. O'BRIEN: That's right, Your Honor.

3 THE COURT: And then it sounded like the second
4 search arises -- basically rises and falls with the first
5 one. Is that proper understanding?

6 MR. O'BRIEN: Yes, Your Honor.

7 MR. HOLLENHORST: Your Honor, of course that --
8 the government doesn't concede that the second one was the
9 fruit of the poisonous tree and will present some evidence
10 as to why we believe that. We also have a standing
11 argument.

12 THE COURT: Sure. And I understand the government
13 might have a number of different positions. I just want --
14 I was trying to clarify my understanding was, basically, I
15 mean if, you know, basically the first one is good or bad,
16 the second one sort of rises and falls with it.

17 Okay. And that sounds like the case, obviously
18 subject to whatever additional arguments folks have.

19 Okay. Is this a four corners review?

20 MR. HOLLENHORST: Yes, Your Honor. With the
21 caveat that -- which I've already said, and I don't mean to
22 belabor this point, but the government's going to take the
23 position also that there's no standing to contest these
24 warrants in the first place.

25 And then, secondly, that -- let's see, what is the

1 second? Oh, we do have an independent basis for the seizure
2 of the firearms, which we will be arguing and briefing.

3 THE COURT: Okay. Mr. O'Brien?

4 MR. O'BRIEN: Well, Your Honor, I'm not sure it's
5 simply a four corners argument.

6 The argument for the defense is that the first
7 search was for two tracking devices and law enforcement
8 exceeded the scope of that search.

9 And the second search on that day was based on a
10 warrant for the firearms.

11 THE COURT: So exceeded the scope of the warrant
12 itself?

13 MR. O'BRIEN: Yes.

14 THE COURT: Okay. Thanks.

15 Anything else on that, Mr. Hollenhorst, other than
16 litigation?

17 MR. HOLLENHORST: No, Your Honor.

18 THE COURT: Okay. ECF 53, defendant's motion for
19 suppression of statements.

20 My understanding from the papers is that this is
21 the motion we will be litigating today and whatever may
22 additionally need to be explored with respect, I suppose, to
23 52, based on whatever. But primarily it seems like that's
24 why we have an officer here.

25 And to confirm, there are two statements at issue,

1 one March 14, 2019, statement taken at Olympic Auto Center.
2 And, two, the March 15, 2019, statement taken at the Ramsey
3 County Jail.

4 Is that a correct understanding of defense?

5 MR. O'BRIEN: It is, Your Honor.

6 And to provide a little more detail. The first
7 statement was not accompanied by a *Miranda* warning. The
8 second was -- or was prefaced by a *Miranda* warning.

9 (Off-the-record discussion.)

10 THE INTERPRETER: Sorry, Your Honor. My client
11 just wanted to make sure my mouth was closer to the
12 microphone.

13 (Off-the-record discussion.)

14 THE DEFENDANT: Okay. I can hear clearly now,
15 sorry.

16 THE COURT: Okay. Very well. Thank you.

17 Anything else on that point, basically just
18 setting the table a little bit?

19 MR. HOLLENHORST: Nothing more, Your Honor.

20 THE COURT: Okay.

21 Finally, I believe we may have covered this
22 earlier but to the extent that defendant asserted at the
23 time of filing that he did not receive the recording of the
24 March 15th statement, that recording has since been
25 provided? All right.

1 MR. O'BRIEN: Correct.

2 THE COURT: That's it. Other than that then I
3 think we're ready to proceed with next part of this hearing.

4 Government, your case?

5 MR. HOLLENHORST: Thank you, Your Honor.

6 Your Honor, the government calls Sergeant
7 Rigoberto Aguirre.

8 THE INTERPRETER: The interpreter did not hear the
9 name of the officer. I apologize.

10 MR. HOLLENHORST: Rigoberto Aguirre. And the
11 witness will be spelling his name.

12 THE COURT: Okay. Fair enough.

13 THE INTERPRETER: Your Honor, would the Court mind
14 if the interpreter sat over there in order to be able to see
15 and hear the witness better?

16 THE COURT: You can feel free to go wherever you
17 want, other than you can't sit here.

18 Okay. Sergeant, if you could raise your right
19 hand.

20 Do you swear to tell the truth, the whole truth
21 and nothing but the truth, sir?

22 THE WITNESS: I do.

23 THE COURT: And, sir, if you could state your full
24 name and spell it slowly for the record.

25 THE WITNESS: Sergeant Rigo Aguirre. R-I-G-O.

1 Last name is A-G-U-I-R-R-E.

2 THE COURT: Okay. And, Sergeant Aguirre, did you
3 bring any notes up with you here today?

4 THE WITNESS: Yeah. Copies of the report.

5 THE COURT: Okay. You're free to refer to that to
6 refresh your recollection but when you do could you, as a
7 courtesy to everyone in the courtroom, just let us know that
8 so that we understand what you're doing on that?

9 THE WITNESS: I understand that.

10 THE COURT: With that, please proceed, counsel.

11 MR. HOLLENHORST: Thank you.

12 (Sergeant Rigoberto Aguirre)

13 DIRECT EXAMINATION

14 BY MR. HOLLENHORST:

15 Q. Since I mentioned your name for the record, could you us
16 your full name, first full name?

17 A. Rigoberto. R-I-G-O-B-E-R-T-O.

18 Q. Thank you. Sergeant, where do you work?

19 A. St. Paul Police Department.

20 Q. And how long have you worked there?

21 A. About 18 years -- 17 years.

22 Q. What's the current nature of your duties?

23 A. My current assignment is I'm the executive sergeant to
24 the assistant chief of police.

25 Q. All right. On March 14, 2019, what was your duty

1 capacity at that time?

2 A. I was assigned to the narcotics unit for the St. Paul
3 Police Department as a supervisor.

4 Q. In connection with your supervisory duties on that date,
5 March 19th, 2019, did you participate in the search of a
6 premises?

7 A. I did.

8 Q. And where was that?

9 A. That was in Minneapolis at 456 Washington Avenue.

10 Q. Okay. And it was 456 Washington Avenue North
11 Minneapolis, Minnesota?

12 A. That is correct.

13 Q. And that also is the address of a business that was
14 located there, right?

15 A. Correct.

16 Q. And what was that business name?

17 A. I believe it was called Olympic Auto.

18 Q. Say Olympic Auto Center?

19 A. Yes.

20 Q. All right. So Government Exhibit 1, which has already
21 been accepted into evidence, was a search warrant for two
22 tracking devices, is that right?

23 A. Correct.

24 Q. Could you just --

25 THE COURT: Counsel, I don't know if I formally

1 accepted anything, so.

2 MR. HOLLENHORST: Okay. I will offer Government's
3 Exhibit 1 and 2 at this time.

4 MR. O'BRIEN: No objection.

5 THE COURT: Court receives Government's Exhibit 1
6 and 2.

7 BY MR. HOLLENHORST:

8 Q. So Government Exhibit 1 was not prepared by you but you
9 know now that it was a warrant for tracking devices, is that
10 right?

11 A. Yes.

12 Q. Could you just very briefly describe why the police were
13 looking for tracking devices?

14 A. Tracking devices were placed on two vehicles. Those two
15 tracking devices disappeared. Those believed off the
16 vehicles at this location.

17 Q. Okay. And police actually were still getting signals
18 from these devices which tracked back to this address we
19 just talked about, right?

20 A. I don't remember if the devices were live giving that
21 address or if that was the last location they were at.

22 Q. Okay. Could you describe the size and shape of a
23 tracking device typically used in these cases?

24 A. Yep. They're all different sizes but these particular
25 devices that we used that day were rectangular-shaped.

1 They're probably 5 inches by 4 inches, maybe 2 inches
2 thick. They have magnets on them. It just looks like a
3 black box.

4 Q. Okay. And so it's certainly small enough to fit into a
5 metal filing cabinet or some other type of cabinet?

6 A. Yes.

7 Q. Okay. The search warrant authorizes the search of these
8 premises to find those items, right?

9 A. Correct.

10 Q. And so would it be reasonable to say that the police
11 were authorized to look in cabinets for these devices?

12 A. Yes.

13 Q. Were the devices ever recovered?

14 A. I don't believe so.

15 Q. Was -- so why don't you describe then the setting of
16 this address when you arrived there. How many police were
17 there and how many people were at the premises?

18 A. So I'd have to count the number of --

19 Q. Roughly.

20 A. -- people that were there but about ten officers. I
21 believe there was about three people inside this business.
22 It's a big building with the target address or the Olympic
23 Auto Center was at the far end of when you come into the --
24 I don't remember if that was the south or north end, but it
25 was the far end.

1 Q. Is your microphone on?

2 THE COURT: Mr. Hollenhorst?

3 MR. HOLLENHORST: Yes.

4 THE COURT: Could you -- again, I think you're
5 doing it now, but you're going to develop a little layout of
6 the place for me --

7 MR. HOLLENHORST: Yes. Yes.

8 THE COURT: -- location? If there's going to be a
9 file cabinet involved --

10 MR. HOLLENHORST: Right.

11 THE COURT: -- where that is.

12 MR. HOLLENHORST: Right.

13 THE COURT: And, you know, what did it appear to
14 be involved in, you know.

15 MR. HOLLENHORST: Mm-hmm.

16 That's what we're going to do, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. HOLLENHORST: Okay.

19 THE COURT: Just want to make sure.

20 MR. HOLLENHORST: Okay.

21 BY MR. HOLLENHORST:

22 Q. I want to just make sure that your microphone is on.

23 I'm having trouble hearing you.

24 THE INTERPRETER: The interpreter is also having
25 trouble. It doesn't seem like that microphone is working at

1 all.

2 THE WITNESS: Test, test, test.

3 MR. HOLLENHORST: That's better.

4 (Off-the-record discussion.)

5 THE WITNESS: Test, test, test.

6 MR. HOLLENHORST: All right. May I continue, Your
7 Honor.

8 THE COURT: Yes. You may.

9 MR. HOLLENHORST: Thank you.

10 BY MR. HOLLENHORST:

11 Q. All right. So as you arrived then describe the setting.
12 Describe this place that was being searched?

13 A. So the garage or the set area we're searching is a
14 portion of a bigger building --

15 (Court reporter interrupted.)

16 A. The building we were searching is in sections so the
17 portion we were searching has its own front door. It's a
18 garage open area.

19 When you first walk in the door there's a small
20 lobby that you can walk through. I would estimate it's no
21 bigger than 14x14 and there is a bathroom, if I recall. And
22 then there's a door to go into the main, like, garage area.
23 And this is a big garage, open area, holds, I want to guess
24 somewhere in the area of 10, 15 cars.

25 Q. Okay. And every one of these places I've been into have

1 these wells and then lifts for cars, is that right?

2 A. Correct. I don't remember exactly how many lifts or
3 those types of things there are, but there's tools in there,
4 there was cabinets, it was -- it was a little bit overrun by
5 vehicles and gear and everything.

6 Q. How many vehicles do you think were in there?

7 A. I'm going to guess there was around eight vehicles in
8 there at the time.

9 Q. Okay. Pretty large area then?

10 A. Yes.

11 Q. And you surmised from what you saw that this was a
12 business engaged in auto repair?

13 A. Auto repair, auto body, yes.

14 Q. Okay. Now, were there any filing cabinets or other
15 types of containers along the walls or in the center area of
16 this place?

17 A. Yes. There was various cabinets, containers, boxes of
18 all sorts all over.

19 Q. Okay. We're going to be talking about a specific
20 cabinet later on. Why don't you describe where that one was
21 on?

22 A. So if I remember correctly, that was roughly in the
23 middle of garage.

24 Q. Okay. Middle, what do you mean by that? In the center?

25 A. In the center of the garage.

1 Q. So it wasn't hooked to a wall?

2 A. Not that I recall.

3 Q. Okay. And it was -- describe the cabinet.

4 A. I don't have information on the cabinet. I wasn't the
5 person who found anything in the cabinet.

6 Q. Okay. You were there when the items were found, though,
7 right?

8 A. I was in the building, yes.

9 Q. Okay. Well, we'll get to that later during your
10 testimony.

11 When you entered -- when the police entered the
12 facility, what happened?

13 A. Announcements were made that the police were there for a
14 search warrant. Officers went inside. Two people were
15 located right away. I'm not sure if they were in the lobby
16 or coming out of the front doors. And then one person -- at
17 least one person was inside in the garage.

18 Q. Was one of the people that you're talking about the
19 defendant?

20 A. Yes.

21 Q. And do you see him in the courtroom today?

22 A. I do.

23 Q. Could you identify him for the record?

24 A. Yep. As I recall, Perez Gomez Santos, sitting in the
25 orange uniform wearing a hat to my left.

1 MR. HOLLENHORST: Your Honor, may the record
2 reflect the witness has identified defendant Santos Gomez
3 Perez.

4 MR. O'BRIEN: No objection.

5 THE COURT: Record will so reflect.

6 BY MR. HOLLENHORST:

7 Q. Where was Mr. Gomez at the time that you entered?

8 A. I believe he was one of the first people there. So he
9 was -- he was right at the entrance to the building and was
10 kept there while we made entry.

11 Q. All right. Now you say kept there. Is it true then
12 that all three of these men, and you believe there were
13 three, were handcuffed, right?

14 A. Yes.

15 Q. Why did you do that?

16 A. Various reasons. Officer safety. It's a big area,
17 which all relates to officer safety.

18 Also, just as general protocol when you go into a
19 search warrant like this, big open area, we detain everybody
20 in there.

21 Q. And in the spirit of full disclosure, Mr. Gomez was also
22 suspected of having engaged in some drug trafficking prior
23 to this, is that right?

24 A. That is correct.

25 Q. Okay. And so I think we will concede for the record

1 that Mr. Gomez was essentially detained and in custody at
2 the time of further activities there, right?

3 A. Yes.

4 Q. Okay. So let's get to that. Did you see the police
5 officers looking around for these tracking devices?

6 A. Yes.

7 Q. Where were they looking?

8 A. Everywhere. We spread out. We tried to be methodical
9 on the search.

10 Q. Were some of the places they were looking cabinets?

11 A. Yes.

12 Q. And boxes?

13 A. Yes.

14 Q. Other containers you described?

15 A. Anywhere that that tracking device would fit.

16 Q. Okay. At some point did an officer approach you and ask
17 you to do something?

18 A. I was informed that the defendant wanted to speak with
19 me.

20 Q. Okay. What happened in response?

21 A. I went -- met with the defendant and spoke to him inside
22 the garage.

23 Q. So at this time was the defendant standing, sitting --

24 A. Standing in handcuffs.

25 Q. Okay. Were there any other forms of restraint?

1 A. No.

2 Q. Did the police officers have weapons drawn?

3 A. Not at this time.

4 Q. Okay. But there were uniformed officers presumably with
5 firearms?

6 A. Officers with firearms wearing vests that identify them
7 as police.

8 Q. Okay. And conceding that that could be argued as a
9 coercive setting, other than that were there any -- did you
10 pressure the defendant into doing anything that day?

11 A. No.

12 Q. So you say then that he first wanted to talk to you, is
13 that right?

14 A. That is correct.

15 Q. Okay. What happened when you approached him?

16 A. So I approach him and from my memory and from some notes
17 that I have in my report he wanted to -- an opportunity to
18 get out of trouble.

19 This is very common in my line of work that
20 someone may want to trade information in exchange for some
21 kind of a prosecutorial help or just not being arrested that
22 particular day.

23 Q. Okay. And to your knowledge was he aware at this time
24 that he had been arrested?

25 A. Yes.

1 Q. Okay. For what?

2 A. The narcotics.

3 Q. Okay. So in your view then that was partly why he
4 wanted to talk?

5 A. It could have been.

6 Q. Okay. But you don't know for sure?

7 A. I don't know for sure.

8 Q. Okay. Prior to that statement that he made, had you
9 questioned him in any way?

10 A. No.

11 Q. Had any other officers, to your knowledge, questioned
12 him?

13 A. Not that I know of, but I don't believe so.

14 Q. Okay. So now we have to get into the nitty gritty of
15 what was said. So why don't you describe to the Court how
16 the conversation proceeded?

17 A. Yep. So, as I said, very typical in my line of work
18 that a defendant may want to offer information in exchange
19 for something, which is what I believed was going to happen.
20 The defendant wanted an opportunity to get, I don't know, to
21 get out of trouble, basically.

22 He told me that he knew of a place, and not this
23 garage, that had a -- various amounts of firearms that were
24 delivered to him that were supposed to be transported or, I
25 guess, concealed and taken over to Mexico and he wanted to

1 give that information and help us by getting a phone call
2 and leading us to those firearms, which we would assume
3 would be illegal firearms and at least they were going to be
4 transferred out of the country into Mexico.

5 Q. Okay. So now all this was said and done -- or said when
6 the officers were still in the process of looking for these
7 tracking devices?

8 A. That is correct.

9 Q. And what time of day, roughly, was this?

10 A. It's about midday. About 1:00, 1:30, if I recall.

11 Q. Okay. All right. And so the defendant said that there
12 were weapons that had been delivered to him, is that right?

13 A. That's correct.

14 Q. And that they were at some other location?

15 A. That is correct.

16 Q. And that these weapons were going to be transported
17 across the border into Mexico?

18 A. Yes.

19 Q. And you suspected then that these weapons were illegal?

20 A. Correct.

21 Q. Okay. What happened -- now, up to this point, had you
22 asked him any questions, the defendant?

23 A. Anything I asked him was in relation to where is the --
24 for example, what location are they at? Just trying to get
25 more of a sense of --

1 Q. Okay.

2 A. -- of what information he's really trying to provide.

3 Q. Okay. But we have to fine-tune this.

4 A. Yes.

5 Q. Because once you start asking questions arguably it's an
6 interrogation, right?

7 So when he told you that he wanted to talk to you,
8 what was your response?

9 A. So when he originally wanted to talk to me --

10 Q. Right.

11 A. -- that's when I approached him to see what he had to
12 say.

13 Q. Okay. And then did you ask him any questions before he
14 started speaking?

15 A. No. He was -- it was clear to me when I approached he
16 wanted to offer information.

17 Q. And then he offered this information without any
18 questioning on your part?

19 A. Correct.

20 Q. Now, after he had --

21 THE COURT: In what language was this?

22 MR. HOLLENHORST: Thank you, Your Honor.

23 A. This was all conducted in Spanish.

24 BY MR. HOLLENHORST:

25 Q. Okay. And I want to lay a little foundation on that.

1 Do you speak Spanish?

2 A. I do.

3 Q. How did you learn Spanish?

4 A. From my parents. They are native Spanish speakers from
5 Mexico.

6 Q. Okay. And did you grow up speaking Spanish?

7 A. I did.

8 Q. Do you consider yourself to be fluent in the Spanish
9 language?

10 A. I do.

11 Q. Both written and vocal?

12 A. I'm very better at vocal.

13 Q. Okay. All right. So all this conversation we're
14 talking was in the Spanish language then?

15 A. Yes.

16 Q. And do you feel like you clearly understood what the
17 defendant was saying to you?

18 A. Yes.

19 Q. And what you're doing now is basically providing a
20 translation of the conversation, is that right?

21 A. Correct.

22 Q. So what you said he said, up to this point there were no
23 questions that had been asked of him --

24 A. About --

25 Q. -- to your knowledge?

1 A. -- the criminal activity? If that's what you're asking,
2 no.

3 Q. Okay. So also any kind of question -- or any behavior
4 on your part that tends to elicit a response could arguably
5 be considered a question. Any of that going on?

6 A. So I should be very clear, in these situations when
7 someone provides information because they want to trade it
8 for something they will give us like a story or some
9 information. Those stories have to be vetted before we do
10 anything with them.

11 So if you say that there are weapons then I would
12 logically want to know are we talking about in the city, in
13 the state, in this country. So things of that nature.

14 Q. Okay. Well, we'll get to that.

15 A. Okay.

16 Q. But this first pronouncement by the defendant was done
17 without questioning, is that right?

18 A. That's correct.

19 Q. Okay. So then what happened next?

20 A. After we were done speaking --

21 Q. No. Because -- how long did the conversation last?

22 A. I'm just going to guess here maybe two to three minutes.

23 Q. Okay. So at some point I inferred from your answer that
24 you did ask him a question or two, for example, Where are
25 these weapons?

1 A. Yes.

2 Q. Okay. So there was some questioning on your part after
3 the defendant's initial statement?

4 A. Yes. From what he told me we would clarify what he's
5 saying, yes.

6 Q. Okay. Why don't you then do the best you can as to
7 reconstructing this conversation at the point where he had
8 already stated what you testified to?

9 A. Okay. So he would have offered information on --

10 Q. And not would have, what he did.

11 A. He offered information about potential criminal
12 activity, which was firearms. That he knew of their
13 location and that they were going to be transported --
14 transported somewhere.

15 I asked him followup questions to clarify where
16 they're going to be transported, in which he indicated
17 Mexico and I think -- no, I'm sorry. He did say Mexico.
18 And I asked him where they were at, he said another
19 location. He also -- I asked him if they were close.
20 That's about all I remember from the location portion.

21 But I was -- my intent was to clarify how far away
22 are we talking about, if this is going to be within my
23 jurisdiction or not really is what it comes down to.

24 And at that point he also mentioned that he needed
25 to receive a phone call from Mexico, specifically from

1 Guadalajara. And I believe that's to the extent -- I
2 understood at this point he may have some information, and
3 we can get into more specifics later, but at the time I was
4 thinking we could get into more specifics later but he had
5 laid down the groundwork of what it is he has access to that
6 we may be interested in.

7 Q. So we didn't have a recording of this conversation.

8 A. That is correct.

9 Q. And you did not have your video cam activated at this
10 point?

11 A. That is correct.

12 Q. And so the -- what was -- I know that intent sometimes
13 isn't intent relevant here but what was your intent at the
14 time of standing across from him listening to what he had to
15 say?

16 A. As an investigator investigating narcotics, firearms,
17 all kinds of violent crimes, we're always trying to improve
18 our investigations by going up the ladder.

19 So if you have the opportunity to, let's say get a
20 street level dealer we would want to know who's providing
21 that source of illegal drugs and move up and so forth.

22 So, in this case, if he was, as we were looking
23 for trackers and he's offering me now the possibility of
24 getting guns, that is much more attractive to us as an
25 organization.

1 Q. Okay. So at the time of the conversation you weren't --
2 is it true that you were not investigating the defendant for
3 firearms trafficking?

4 A. That is correct.

5 Q. That what you were hoping for and really investigating
6 is who are the source of these weapons and where are they
7 going?

8 A. That is correct.

9 Q. Okay. All right. So at some point then the
10 conversation ended, correct?

11 A. Yes.

12 Q. And then tell us how it ended and what happened next.

13 A. After getting the initial information I stepped away
14 from the defendant to kind of process the information that I
15 was receiving. I'm sure I spoke to some other officers
16 letting them know, hey, here's what he's telling me, as I
17 collected the information in Spanish.

18 And the idea was to determine if this is something
19 we were going to want to follow up with. Were we going to
20 want to work and continue talking to person to, again, go up
21 the ladder and get a better case.

22 Q. Okay. What happened then?

23 A. After talking to him I sort of -- I'm sorry, after I
24 talked to some officers, and I was trying to wrap my head
25 around this, I started walking back toward the defendant.

1 And to lay it out, the defendant is standing next
2 to a garage door is and is able to oversee the entire
3 garage. As I'm walking toward the defendant, his eyes --
4 his facial expressions changed, almost like a surprise or a
5 nervousness. I then heard officers behind me loudly say,
6 Camera. When I hear the word camera in my line of work that
7 means that something has been found that needs to be
8 documented and pictured. That is what I believed at that
9 time.

10 In connection with that, knowing that he had just
11 been telling me about something like firearms, and then he
12 started walking toward me in handcuffs saying, I'm just
13 going to show you. And I assumed, kind of putting it
14 together at that moment, these officers just found
15 something, maybe the firearms that he had originally been
16 talking about that he had been saying were somewhere else.
17 And at this point time had run out and he was trying to, I
18 suppose, save a chance for him to work or help us.

19 So the gig was up, so to speak, at that point.
20 That's what I inferred at that moment.

21 Q. Okay. And you say then that he started walking towards
22 where the officers were who had shouted camera?

23 A. Yeah. I was roughly between the officers that said
24 camera and -- but closer to the defendant. So he started
25 walking toward me in the direction of the cabinet area where

1 the firearms were found.

2 Q. And this was at a time when all your interaction with
3 the defendant had ended and now it's starting up again, is
4 that right?

5 A. That's correct.

6 Q. How much time passed from the time the initial contact
7 with the defendant concluded and the events you're talking
8 about now?

9 A. I'm going to guess between two and four minutes.

10 Q. Okay.

11 A. It was short.

12 Q. And as -- then you say the defendant started working
13 towards these officers and what did he say?

14 A. I'm going to show you. I'll just show you. Something
15 to that extent.

16 Q. Okay. Was that in response to any questioning on your
17 part?

18 A. No.

19 Q. What happened next?

20 A. If I recall, I stopped him, told him to back up and then
21 followed up with the officers asking, What did you find?
22 And at which point I was told firearms.

23 I then, kind of what I said earlier, I believed
24 that -- I was kind of processing it at the time, that the
25 defendant clearly was truthful about having knowledge of

1 firearms, was trying to put those firearms in a different
2 location, whether to lead us away from this garage or other
3 reasons, and we had just found them.

4 Q. Okay. Now these officers who you say had found the
5 firearms, where did they find the firearms?

6 A. It was my understanding they were in or by cabinets in
7 some bags.

8 Q. Okay.

9 A. Like large bags. Duffle bags.

10 Q. Okay. I'm going to jump ahead.

11 A. Yeah.

12 Q. The police got a warrant, came back, seized these
13 firearms, right?

14 A. Yes.

15 Q. Were you there?

16 A. Yes.

17 Q. Okay. So you know where they were found, right?

18 A. I didn't recover them myself, but --

19 Q. You saw them-- you saw them recover them?

20 A. Yes.

21 Q. Okay. So let's just jump ahead. At the time you saw
22 them, the police recovering the firearms, where were they?

23 A. They were in a file cabinet in the center -- roughly
24 center of the garage.

25 Q. All right. But you can't give us any rough dimensions

1 of that cabinet?

2 A. This would be -- from three years I'll give you my best.

3 Q. Okay.

4 A. But -- yeah. I'm sorry. I would --

5 Q. Well, would it help you to know that there were, I

6 believe, twenty-three firearms recovered from that -- I

7 think it was roughly on the order of twenty -- over twenty

8 firearms?

9 A. I don't remember the number. I thought -- but I know it
10 was over ten, fourteen maybe.

11 Q. Fourteen. I guess I'm wrong. So fourteen firearms is
12 rather bulky and --

13 A. Yes.

14 Q. So the cabinet was at least able to handle fourteen
15 firearms, right?

16 A. Yes.

17 Q. It was at least that big?

18 A. Yes.

19 Q. All right. So now you said that some of these firearms
20 were in bags?

21 A. Yes.

22 Q. Were the firearms clearly visible, though, when you
23 looked into that file cabinet?

24 A. I never looked into the file cabinet.

25 THE INTERPRETER: Sorry. The interpreter did not

1 hear that last response.

2 BY MR. HOLLENHORST:

3 Q. Did you look at the weapons after they came out of
4 filing cabinet?

5 A. Yes.

6 Q. What did they look at?

7 A. From my --

8 THE COURT: Actually I think for the record we
9 should maybe repeat -- go back one.

10 MR. HOLLENHORST: Oh, I'm sorry. I'm sorry.

11 THE COURT: I think in fairness we should have
12 that answer as part of the record.

13 MR. HOLLENHORST: Okay.

14 BY MR. HOLLENHORST:

15 Q. All right. So I understand that you did not actually
16 look at the firearms when they were in the cabinet, is that
17 right?

18 A. I don't recall looking at those, no.

19 Q. But you saw the firearms after they had come out of the
20 cabinet?

21 A. Yes.

22 Q. And what did they look like?

23 A. I don't recall all specifications but I believe they
24 were what we call long guns. So rifle-type shotgun, longer
25 guns.

1 Q. Okay. So when they came out of the file cabinet you
2 could clearly identify them as firearms?

3 A. So when they were taken out of the file cabinet, I saw
4 them later. I did not see them in the cabinet.

5 Q. When did you see them later?

6 A. When they were being inventoried. I believe they were
7 being done in the lobby area of that location.

8 Q. Okay. I guess what I'm getting at here is that, you
9 know, you can put a handgun -- a little handgun in a bag and
10 you can't -- wouldn't be able to see the handgun, right,
11 because it's in a bag?

12 A. Sure.

13 Q. Were these guns such that you could identify these
14 guns -- in fact, identify at least some of them through
15 other means, like the long rifles?

16 A. So if they're in bags --

17 MR. O'BRIEN: Well, I'm going to object, Your
18 Honor. I think the witness has said he didn't see the guns
19 when they were in the cabinet.

20 MR. HOLLENHORST: Well --

21 THE COURT: You can clarify the time.

22 MR. HOLLENHORST: Right.

23 BY MR. HOLLENHORST:

24 Q. When you saw these guns in the lobby, describe them.

25 A. So this was, again, three years ago. I remember they

1 were put on a table in a bag, opened up and there was just
2 various long guns in there.

3 THE COURT: When you say bag, what you do mean?

4 THE WITNESS: Sorry. So like a duffle --

5 THE COURT: A bag can be the size of a purse --

6 THE WITNESS: I'm sorry.

7 THE COURT: -- it could can be a long bag that you
8 hold a --

9 THE WITNESS: I understand.

10 So what I'm talking about a bag is more of a
11 duffle bag. Something big enough, long enough to
12 accommodate a long gun.

13 So if I was to guess they would probably be
14 anywhere from the -- you know, around 20 inches long kind of
15 a duffel bag. At least maybe 36 inches long and just had
16 guns in it.

17 But just --

18 BY MR. HOLLENHORST:

19 Q. Were all the guns in that bag?

20 A. I don't recall how many bags there were.

21 Q. All right. You're aware, though, that the officers?

22 THE COURT: Sir, Mr. Hollenhorst --

23 Do you remember what kind of guns roughly they
24 were?

25 THE WITNESS: No, Your Honor. My role as a

1 supervisor is kind sort of overseeing the situation.

2 MR. HOLLENHORST: Your Honor, I was under a
3 misconception -- this is my mistake, this is the
4 government's mistake. I was under the distinct impression
5 that the witness had seen the guns, could identify the guns
6 in the cabinet. I think I know what Mr. O'Brien's response
7 is --

8 THE COURT: I'm sorry, you know what?

9 MR. HOLLENHORST: I think I know what Mr.
10 O'Brien's response will be to this request, but I would ask
11 the Court not to continue this hearing, because we can get
12 everything done here, but to leave the hearing open for me
13 at a later time to call the officer who actually seized the
14 weapons because it's going to -- it's -- we're not trying to
15 pull any fast ones but my understanding of the facts is that
16 the officers opened up this cabinet, they saw firearms and
17 then they went to get a warrant, and it is reflected in the
18 second warrant that they found firearms, they actually saw
19 firearms.

20 But I think to aid the Court in understanding the
21 full facts it would be helpful for the government to
22 actually call a witness who initially found the firearms.

23 I thought this witness knew that because he was
24 supervising and he was at the scene. My bad.

25 So that's our request that we -- after we conclude

1 this hearing. And I don't think that testimony would last
2 more than about five minutes and we can schedule the hearing
3 at some subsequent time.

4 THE COURT: Do you want to respond now or we
5 finish examination of the Sergeant and then we can
6 request -- I don't care, I mean.

7 MR. O'BRIEN: I would prefer that we finish the
8 examination and then deal with this request.

9 MR. HOLLENHORST: That's fine, Your Honor.

10 THE COURT: Okay. And I'll ask, if I may, again,
11 if you have any recollection of --you don't have to qualify
12 specifically what model. I mean, were they like shotguns,
13 were they AR-15s, are they, like, 9 millimeters? Any idea
14 like that or --

15 MR. HOLLENHORST: Your Honor, they are inventoried
16 on Government's Exhibit 2. There's a list of them. They're
17 inventoried.

18 THE COURT: Well, maybe for the record, refresh.

19 MR. HOLLENHORST: Yeah.

20 So, Your Honor, we would just rely upon Government
21 Exhibit 2 which is in evidence, that it does list every one
22 of the firearms.

23 And if the witness doesn't remember those
24 firearms, I think that's his testimony.

25 THE COURT: Okay.

1 BY MR. HOLLENHORST:

2 Q. But so -- but let's complete your testimony.

3 Once the warrant -- the second warrant came in
4 then you saw officers take guns or something out of this
5 cabinet and then bring them into the lobby area, is that
6 right?

7 A. That's correct.

8 Q. And then you saw, as officers opened the bag at least,
9 and there were a number of firearms in there, right?

10 A. Correct.

11 Q. Long rifles, handguns and the like?

12 A. As I recall, yes.

13 Q. Okay. Then what did you do?

14 A. Nothing. I didn't touch the guns, if that's what you're
15 asking or do anything with the guns.

16 Q. Okay.

17 MR. HOLLENHORST: I think, Your Honor, that
18 concludes the testimony concerning that date but now we're
19 going to get into the statement the next day.

20 THE COURT: Yeah, proceed.

21 MR. HOLLENHORST: Okay.

22 BY MR. HOLLENHORST:

23 Q. After the guns were seized and everyone left you were
24 then called to duty the next day, right?

25 A. Yes.

1 Q. And what did you do on that date in connection with this
2 case?

3 A. I was asked by Ramsey County Deputy John Ferrian to
4 assist him in conducting an interview of the defendant in
5 Spanish at the Ramsey County Jail.

6 Q. Okay. And describe the setting?

7 A. So inside the jail cold cell, about maybe 12x12, a
8 table, approximately four chairs, myself and Deputy
9 Farrington (sic) -- Ferrian in the room with the defendant.

10 Q. And what time of day was this?

11 A. Midday. I'm guessing around 12:00, 1:00 somewhere in
12 there.

13 Q. Okay. And at this point Mr. Perez was booked and in
14 custody of the state, is that right?

15 A. Yes.

16 Q. And when you conducted the interview describe your
17 clothing and your colleague's clothing?

18 A. Plain clothes. And what I mean by that is we were not
19 wearing anything that was police identifiable. So regular
20 clothing you would see anybody on the street wearing. And
21 in our case I would guess my normal attire would be a
22 sweatshirt and some jeans. Same thing with Deputy Ferrian.

23 Q. Were you carrying weapons?

24 A. No.

25 Q. Okay. How would you describe the defendant's general

1 demeanor on that date?

2 A. He wasn't -- good question. He was fine. He was
3 normal, relaxed.

4 Q. Did he appear to be intoxicated?

5 A. No. Not to me.

6 Q. Okay. Did he appear to be lucid?

7 A. No.

8 Q. Lucid meaning clear of mind.

9 A. Oh, I'm sorry. Yeah. He was fine, he had been in jail
10 for about a day, so.

11 Q. Okay. And so you were -- and then ultimately you asked
12 him questions, he answered and did his answers appear to be
13 responsive to your questions?

14 A. Yes.

15 Q. Did you make any threats to him during the period of
16 this interview?

17 A. No.

18 Q. Did he have any concerns that, for example, I have to go
19 to the bathroom or I feel uncomfortable? Did he voice any
20 such concerns?

21 A. No.

22 Q. Were you generally friendly and of good behavior during
23 this interview?

24 A. Yes.

25 Q. And your colleague as well?

1 A. Yes.

2 Q. Okay. So prior -- so you had a recording machine, did
3 you not?

4 A. Yes.

5 Q. Did you activate your recording machine at some point?

6 A. Yes.

7 Q. When?

8 A. When we sat down and the defendant -- we were waiting
9 for the defendant, if I remember, and when we were all ready
10 to start I turned on the recorder.

11 Q. Okay. At some point after you turned on the recorder
12 did you read the defendant his *Miranda* rights?

13 A. I did.

14 Q. Prior to turning on the recorder did you question the
15 defendant in any way?

16 A. No.

17 Q. So let's get to the *Miranda* rights warning. It's
18 clearly visible on the auto tape, is that right? I mean,
19 audible. It's audible on the tape?

20 A. Yes.

21 Q. Okay. And but you also when doing so you used a
22 standard police phone number, did you not?

23 A. That is correct.

24 Q. Is that marked as Government Exhibit 3?

25 A. Yes.

1 Q. And so you were on the tape, you read through these
2 rights and then --

3 MR. O'BRIEN: Your Honor, excuse me. Has that
4 been introduced?

5 MR. HOLLENHORST: We will.

6 MR. O'BRIEN: Okay.

7 MR. HOLLENHORST: Yeah. So I'll offer Government
8 Exhibit 3 at this time?

9 MR. O'BRIEN: No objection.

10 THE COURT: Court receives Government Exhibit 3.

11 BY MR. HOLLENHORST:

12 Q. So I'm going to hand this up to you in a second if the
13 Court permits, but before I do that there's some writing on
14 the top, right?

15 A. Correct.

16 Q. And that's the general information, the date, the time,
17 the name of the defendant and some other standard booking
18 information, is that right?

19 A. Yes.

20 Q. And then there are four separate questions in Spanish,
21 is that right?

22 A. Yes.

23 Q. And then next to each one there are initials that appear
24 to be S.G., is that right?

25 A. Yes.

1 Q. Who made those initials?

2 A. The defendant.

3 Q. Okay. And those are presumably the initials for Santos
4 Gomez, right?

5 A. Correct.

6 Q. And then is it true that the defendant signed his name
7 at the bottom of the form?

8 A. Yes.

9 Q. And then you applied your name and put the date on
10 there, correct?

11 A. Yes.

12 Q. Okay.

13 MR. HOLLENHORST: And I would just ask, Your
14 Honor, does the -- is the defense contesting the *Miranda*
15 rights warning or should we go through what was actually
16 read in Spanish and then the witness I will have him
17 translate what that means?

18 MR. O'BRIEN: Your Honor, I'll stipulate that that
19 Spanish form correctly translates the *Miranda* warning.

20 MR. HOLLENHORST: Okay. Thank you.

21 THE COURT: Thank you, counsel, for that courtesy.

22 BY MR. HOLLENHORST:

23 Q. So after reading these *Miranda* rights in Spanish, which
24 are the standard rights that one would hear in English,
25 correct?

1 A. Yes.

2 Q. Then the defendant by his initials and through his
3 signature I take it responded that he was willing to answer
4 questions?

5 A. Yes.

6 Q. And then you did question the defendant and he gave a
7 fairly lengthy statement of his involvement with these
8 firearms, is that right?

9 A. Yes.

10 Q. And how long did that interview last?

11 A. About 30 minutes.

12 Q. Okay. So by the end of the interview the defendant had
13 provided you with quite a few details as to how the weapons
14 were acquired by him, what he did with them and what his
15 intentions were thereafter with respect to these weapons?

16 A. Yes.

17 Q. Okay. Did his answers mirror or differ somewhat from
18 his initial statements the day before?

19 A. They were similar, but now in this setting there was --
20 do you want me to give an example?

21 Q. Yes.

22 A. Okay. So when we were speaking at the garage the day
23 before he had mentioned that the guns were going to go to
24 Mexico. But in this interview, although he came very close
25 to it, he was just short of saying he knew they were going

1 to Mexico that maybe they were going to another state, but
2 not that he knew that he was going to hide them to be
3 transported.

4 So he alluded to it that he was going to hide
5 things. But little details, little details that --

6 Q. Okay.

7 A. Same story line, just trying to keep a little bit away
8 from -- I don't know how to describe it.

9 Q. So he provided more details?

10 A. Yeah. He provided more details.

11 Q. But did his statement seem plausible to you at the time
12 of the interview?

13 A. Yes.

14 Q. Did you ever confront him and show an angry face to try
15 and get him to say something else?

16 A. No.

17 Q. Okay. And everything that you said and he said is
18 recorded on this audio that we've provided the Court.

19 I'm going to now offer Government Exhibit 4. This
20 is the statement, right?

21 A. Correct.

22 MR. HOLLENHORST: Your Honor, we would offer
23 Government Exhibit 4.

24 MR. O'BRIEN: No objection.

25 MR. HOLLENHORST: Okay.

1 THE COURT: The Court receives Government
2 Exhibit 4.

3 BY MR. HOLLENHORST:

4 Q. And you've listened to Government Exhibit 4, at least,
5 you know, prior to your testimony today?

6 A. Yes.

7 Q. And everything that you said to him and he said to you
8 is captured on that, right?

9 A. Yes.

10 Q. After you turned off the recorder what if any
11 conversation was there?

12 A. Okay. So there's two recordings.

13 Q. Right. Okay. Yes. Please explain that. There's two
14 files.

15 A. There's two files. My partner that was assisting Deputy
16 John Ferrian does not speak Spanish.

17 I ran the interview and believing that I had asked
18 the proper questions about the firearms, how he got them, I
19 believe the interview was over. So what I did is I ended
20 the interview, turned off my recorder and then explained to
21 the Case Agent John Ferrian what he had said, you know,
22 summarizing it.

23 Deputy Ferrian had followup questions that he
24 wanted me to ask. So we turned the recorder back on in
25 order to ask those questions.

1 Q. Okay. Was there any questioning of the defendant during
2 that break?

3 A. No.

4 Q. And once the recorder was reactivated and another -- and
5 additional questions were asked then the recording was
6 turned off again, right?

7 A. Yes.

8 Q. Were there any questions after the recording -- recorder
9 was turned off?

10 A. No. Just, see you later, goodbye, thank you or
11 whatever.

12 Q. Okay.

13 MR. HOLLENHORST: I think that's all the questions
14 I have, Your Honor.

15 THE COURT: Okay. Very well. Mr. O'Brien.

16 MR. O'BRIEN: Thank you.

17 **CROSS-EXAMINATION**

18 BY MR. O'BRIEN:

19 Q. I know it's been almost three years, it will be three
20 years next month since this incident and I understand that
21 you're an officer from St. Paul and this -- this repair
22 garage is located in Minneapolis.

23 I have one threshold question. You thought that
24 the tracking devices may be located at the Olympic Auto Care
25 on 4050 North Washington because you were getting a signal

1 back to that area?

2 A. Yeah. So let's see if I can clarify this because I
3 don't want to misspeak.

4 The case agents who had applied these trackers --
5 these trackers would at a certain interval send back the
6 tracker's locations, they would even send back if you
7 removed the trackers.

8 So based on the information, I don't remember if
9 they got a removal alert or what it was, but their last
10 location had been this area or this location and that is why
11 they were seeking to recover them.

12 Q. So the information you're receiving about the tracking
13 device, would that give you precise information as to where
14 within a building the device would be?

15 A. Once the -- from my experience, not -- not the technical
16 person that operate -- or, I'm sorry, that creates these
17 things. From my experience, once those trackers get under
18 or inside the building or -- depending on how the building
19 is made, the accuracy will start getting -- so a lot of
20 times you'll get, you know, it will give you like a radius
21 and once they -- so you could see the radius or the device
22 moving toward this location and then you could see it all of
23 a sudden become larger.

24 So from experience you would know that clearly
25 this device has entered inside of a building because the

1 radius has changed. So I'm giving you an explanation of
2 generally how it works.

3 In this case if I remember correctly, there was
4 one tracker -- the first tracker had gone missing in this
5 location and the investigators deduced that this is the
6 location when the second tracker also went back to this
7 location and disappeared. So that's how they were able to
8 decide that this would be the location.

9 So once you're inside the building and you're
10 putting inside the building, there's no way to really know
11 exactly where inside that building the tracker would be,
12 like exact location.

13 Q. So when you were -- officers were carrying out the
14 search of 4056 Washington, the tracking device wasn't giving
15 you any help in locating it?

16 A. Within the building?

17 Q. Yes.

18 A. No.

19 Q. Okay. So 4056 Washington, that's located on the
20 Mississippi River, correct?

21 A. I don't know if it's on the Mississippi River, I'm just
22 using the address.

23 Q. Well, it's an industrial area, isn't it?

24 A. Yes.

25 Q. How many times have you been to that building?

1 A. I'm guessing, once, maybe twice. I don't remember if we
2 did anything in advance of this or not.

3 Q. Okay. And, again, it's been almost three years but you
4 do remember what the building looks like, right?

5 A. Yes.

6 Q. And you know that it's located next to a junkyard?

7 A. That sounds about right.

8 Q. And, in fact, surrounding this building are a lot of
9 junked and abandoned -- or were back in March of 2019,
10 abandoned and junked cars, right?

11 A. Yeah. I don't want to get too far ahead of myself. I'm
12 not disputing you, I just don't remember that part.

13 Q. The address is painted on the wall, isn't it?

14 A. I don't remember.

15 Q. Do you remember any signs, any signage?

16 A. Nope. I don't remember.

17 Q. Do you remember an open or closed sign?

18 A. No.

19 Q. Does that mean you don't remember if there was --

20 A. I'm sorry, I don't remember.

21 Q. Do you remember any advertisements?

22 A. I do not recall.

23 Q. Are there any windows to the outside?

24 A. No.

25 Q. There are no windows.

1 A. Not that I recall, no. If they were they were -- they
2 would have -- from what I recall they would have been
3 covered up because I don't remember being inside the garage
4 being able to see outside.

5 Q. So when you appeared at 4056 North Washington how long
6 was it before you or any officers entered the building?

7 A. I don't -- I don't remember.

8 Q. An hour?

9 A. I wouldn't think so. I don't remember.

10 Q. Did you see any customers going in or going out?

11 A. If I recall, I wasn't in -- I wasn't in the front of the
12 building, like watching the building.

13 Q. So you didn't see anyone -- any customers going in or
14 going out?

15 A. Not that I recall.

16 Q. There's a door -- a door to the office. And is that the
17 door the officers entered?

18 A. Yeah. It's the only door I remember.

19 Q. Well, there's -- there are there are doors that would
20 allow a vehicle to come in and out, right?

21 A. Yes. Yes.

22 Q. But they were closed?

23 A. Correct.

24 Q. And did you see those doors?

25 A. The garage doors?

1 Q. Yeah.

2 A. Yes.

3 Q. Were there -- were there vehicles blocking those doors?

4 A. So I want to say -- you know, I don't recall.

5 Q. Was that -- the smaller door that you went into, not the
6 garage bay doors, the smaller door that you and the officers
7 went into, was that open or closed?

8 A. I know it was unlocked. I don't know if -- do you
9 remember like -- I don't think the door was opened.

10 Q. It wouldn't have been opened in March, right?

11 A. No.

12 Q. So did officers announce their presence before opening
13 the door?

14 A. I assume they did, yes. That's their standard
15 procedure.

16 Q. But you don't know whether they did or not?

17 A. Correct.

18 Q. Were you first in line, second in line or --

19 A. I was --

20 Q. Where were you in the order?

21 A. I was way in the back.

22 Q. Way in the back?

23 A. Yeah.

24 Q. Well, when you went -- when you went in that small door
25 you're essentially in this little lobby area, right?

1 A. Yes. As I recall, yes.

2 Q. There's some chairs for customers?

3 A. Yes.

4 Q. There's like a -- oh, there's a window like a -- like in
5 a bank where a bank teller would be. There's a window there
6 where presumably someone who was working for the auto repair
7 place would be?

8 A. As you mentioned it, yes. I do think I recall that,
9 yes.

10 Q. Were there any customers in that lobby area?

11 A. I don't know. I know -- I think we had at least a team
12 of three people, I just don't know if they were part of the
13 work crew or if they were from the lobby. I don't remember.

14 Q. Okay. I didn't speak well. Did you arrest anybody in
15 the lobby area?

16 A. We -- people were detained. I don't know if they were
17 in the lobby area.

18 Q. You don't know where anyone was arrested?

19 A. I'd remember -- if I remember correctly, the defendant
20 was and one other person were detained at the front door and
21 then one other person was detained inside the garage.

22 Q. The defendant was detained at the front door did you
23 say?

24 A. If I recall correctly.

25 Q. You mean the door to the outside?

1 A. Yes. That's the best I recall, so.

2 Q. So you're saying that the defendant was in the lobby
3 area when officers arrived?

4 A. No. I -- just that he was detained right by the front
5 door. So I -- yeah, he must have -- I don't know if he was
6 inside or stepping out. I don't know. I didn't make any
7 arrests.

8 Q. Well, wasn't the defendant detained in the work area?

9 A. I believe he was detained. I'm sorry, let me back up.
10 Are you asking if he was in the work area at any
11 point? Because I spoke to him in the work area.

12 Q. Well, let's just clarify. There's a lobby area and I
13 think you said it was maybe 14x14?

14 A. Somewhere like that.

15 Q. And then there's a door that leads into a large
16 mechanic's area?

17 A. Yes.

18 Q. There was a lot of lifts and wells and equipment and
19 parts and all that, right?

20 A. Yes.

21 Q. So which -- when you -- when you arrested the defendant,
22 where was he?

23 A. So as I said -- what I recall is he was detained at the
24 front entrance area of the business. I didn't arrest him.
25 I think just for clarification, this is a Ramsey County

1 search warrant that Ramsey County supervisors who were their
2 Task Force. So a lot of these things that I'm saying I
3 don't recall is because it was --

4 Q. So -- but you had this talk with the defendant in the
5 work area?

6 A. Yes.

7 Q. And you're saying he may have been detained in the lobby
8 area?

9 MR. HOLLENHORST: Objection, Your Honor. Asked
10 and answered a thousand times.

11 THE COURT: I'll overrule because it's very
12 confusing to me so far.

13 BY MR. O'BRIEN:

14 Q. I'd like to know when -- if he was arrested in the lobby
15 area when was he brought to the work area?

16 A. I don't know.

17 Q. Did you see him being brought from the lobby area to the
18 work area?

19 A. I don't recall seeing him be brought to there.

20 THE INTERPRETER: The interpreter did not hear
21 that last response. I apologize.

22 THE WITNESS: I don't recall. I don't recall if
23 he was in the lobby area wanting to speak with me and then
24 he stepped into the garage area to speak quietly or
25 privately or if he was already there.

1 THE COURT: Mr. O'Brien, if I may.

2 When you first encountered Mr. Gomez was he
3 already in handcuffs?

4 THE WITNESS: I believe in watching the video, my
5 video, I believe he was at the front door on the floor
6 before he was handcuffed, so he wasn't handcuffed. I would
7 have gone past him. So if you're going to the garage --

8 THE COURT: So when you first saw him he was on
9 the floor near the entrance area as opposed to the back
10 area, is that correct?

11 THE WITNESS: Correct.

12 THE COURT: Okay.

13 THE WITNESS: So we would have all approached.

14 I was really far behind as a supervisor, too, you
15 would lead -- lighten people up front and then as we went
16 inside we dealt with everything, whatever was inside.

17 But if I recall correctly that Mr. Gomez was not
18 -- I didn't detain him, but was not detained inside the big,
19 open garage area.

20 THE COURT: Clarification of the garage area
21 versus this front area.

22 THE WITNESS: Yeah.

23 THE COURT: I think we've been trying to --

24 THE WITNESS: Sorry.

25 THE COURT: Did you say there was a door, like a

1 closed door there. Did you recall or --

2 THE WITNESS: So if you think about a pretty
3 typical repair shop you would go to the front door. This is
4 a -- if I remember there was a big metal door, you open it
5 up. You walk into the lobby area, there was a counter there
6 and I believe Mr. O'Brien described the glass partition. So
7 that would have been like a clerical area. And then there's
8 the lobby area with chairs beyond that. There would be a
9 door to go into the actual main working area of the garage.

10 THE COURT: Okay. Thank you.

11 BY MR. O'BRIEN:

12 Q. So the defendant was working at Olympic when you
13 entered, correct?

14 A. So I didn't see him like physically working but I
15 assumed he was.

16 Q. When you and officers entered the shop did you and other
17 officers point firearms at the people that were inside?

18 A. Yes.

19 Q. And you did that for what reason?

20 A. As we're entering we're clearing an area. You don't
21 know what is a threat, not a threat. And so we, kind of
22 like any search and search warrant at that time and point
23 your guns at, if you see someone, you don't know what's in
24 their hands --

25 Q. And --

1 A. -- just as a tantamount to gain compliance.

2 Q. And was that in the lobby area or in the work area?

3 A. Probably both.

4 Q. So you didn't put the defendant in handcuffs?

5 A. I don't recall putting him in handcuffs.

6 Q. But you know at some point he was in handcuffs?

7 A. Yes.

8 Q. And he was on the floor, right?

9 A. Yes.

10 MR. HOLLENHORST: Your Honor, the government
11 concedes the defendant was in custody at the time of
12 these -- this conversation that the witness had with him.

13 THE COURT: Thank you.

14 BY MR. O'BRIEN:

15 Q. Now, you spoke with Mr. Gomez about what you considered
16 his exposure to drug charges, right?

17 A. No.

18 Q. You didn't tell him?

19 A. I'm sorry, in the interview? In the interview you're
20 talking about? In the recorded interview or are you talking
21 differently --

22 THE COURT: Could you clarify what timeframe.

23 BY MR. O'BRIEN:

24 Q. I don't know. Well, from the time that the defendant
25 was on the ground in handcuffs going forward did you tell

1 him -- did you ever talk with him about his exposure to drug
2 charges?

3 A. That he was being arrested for drug charges? I believe
4 that was conveyed to him in Spanish finally at some point.

5 Q. Did you tell him that he was going to jail for drug
6 charges?

7 A. I believe that was basically inferred when I told him he
8 was under arrest for drug charges. I don't know if I used
9 the exact term jail but.

10 Q. Okay. Because you've made some reports on what happened
11 on the 14th of March, right?

12 A. Yes.

13 Q. And did you review those reports before today?

14 A. Yes.

15 Q. You made a report on the 28th of March and you stated,
16 "I had previously talked to defendant and told him he was
17 going to jail for drugs." I had previously. That's what
18 your report says, right?

19 A. Can I look at it real quick just to make sure I have the
20 right words?

21 Q. Sure.

22 A. Yeah. So I see the sentence you have there and I -- I
23 guess my -- what I'm saying is the intent is to either --
24 that is the intent. To make sure he understands it's a drug
25 charge, whether he's being arrested for narcotics and then

1 infer he's going jail or, hey, you're going to jail for
2 narcotics.

3 Either way I was -- I think we're splitting hairs
4 in my opinion but, yes, I'm agreeing with you. That's the
5 intent of the conversation.

6 Q. I just want to know when this conversation took place.

7 A. Oh. That was before I spoke to him.

8 Q. I'm sorry what?

9 A. Before I spoke to him in the garage. Is that --

10 Q. When did you first speak to the defendant?

11 A. I'm assuming -- again, I'm remembering here, from
12 assuming I told him he was arrested or going to jail for
13 narcotics prior to our conversation where I was told, hey,
14 he wants to talk to you.

15 Q. Well, what --

16 A. So basically.

17 Q. Well, when you told him -- go ahead. I'm sorry.

18 A. So when he was told he was arrested/detained/going to
19 jail, after that is when we had the conversation.

20 Q. Okay. So this conversation where you told him that he
21 was going to jail for drugs, that happened in the work area
22 or in the lobby area?

23 A. I don't recall.

24 Q. Once officers gained access to the work area officers
25 started looking for the tracking device, right?

1 A. Correct.

2 Q. And about how long before officers entered the work area
3 did they find firearms in a cabinet?

4 A. I'm going to guess anywhere from 10, 20 minutes.
5 Somewhere in that neighborhood. I just don't remember.

6 Q. Have you seen the filing cabinet?

7 A. When I was there at the garage, yes. I just don't
8 recall it. There was a lot of stuff there.

9 Q. Well, did you see the filing cabinet before the guns
10 were found or after?

11 A. My attention would have been drawn to it after.

12 Q. After.

13 A. I mean, clearly I walked in, helped search, clear the
14 area. It would have been one of many things I wouldn't
15 have, you know, paid attention to and then afterwards later
16 they would have alerted me to the guns and that's when I
17 would have paid attention to it.

18 Q. So you don't know whether the filing cabinet was open or
19 closed?

20 A. No.

21 Q. You don't know if it had a lock on it?

22 A. No.

23 Q. And do you know how officers gained entrance to the
24 filing cabinet?

25 A. No.

1 Q. There's been some talk of the guns being in a bag and I
2 think you said you never saw the guns while they were in the
3 bag, correct?

4 A. If I recall correctly they were brought into the lobby
5 and that's where they were kind of opened up -- the bag
6 would be opened up and guns would have been looked at for
7 inventory purposes.

8 Just wasn't -- I was just standing around. I
9 wasn't the one inventorying them and I had a lot going on so
10 I didn't specifically just concentrate on these guns.

11 Q. Did you see the guns while they were in the bag with the
12 bag closed?

13 A. I don't recall. I want to say no but I don't recall.

14 Q. Okay. But you did see the guns when they were out of
15 the bag.

16 A. Out of the -- well, they were -- if I recall correctly,
17 they would have been -- the bag would have been opened up in
18 the lobby area so I would have -- when they were, you know,
19 bag opened up, guns inside, then we would have gone through
20 them in more detail.

21 Q. So you had an opportunity to -- opportunity to see the
22 bag, correct?

23 A. Yes. I must have. Yes. Yep.

24 Q. And was that bag a see-through bag?

25 A. No. I remember that.

1 Q. So if the bag was closed, is it fair to say the firearms
2 could not have been seen?

3 A. I wasn't there. I wasn't there. I mean, I guess I'm
4 not sure what you're -- maybe could you reask that again? I
5 just want to make sure I get this right.

6 Q. Well, was it a see-through bag?

7 A. No.

8 Q. So if the bag's closed, someone looking through the bag
9 would not see the firearms, correct?

10 A. I don't know if the bag was open or closed, I don't
11 know. I was not the one who found the bag in the cabinet.
12 I did not go to the cabinet to, like, investigate. I was
13 just doing one small part in this whole thing.

14 Q. By the way, were any of the officers wearing body cams
15 during all of this?

16 A. Not during the search.

17 Q. Why?

18 A. Because once the -- once the area is considered safe or
19 that we have control of it, the police have control of it
20 and we are not individually -- I'm sorry, any members of our
21 St. Paul Police Department are not holding or detaining
22 anybody inside we can then shut off our video cameras -- or
23 our body-worn cameras.

24 Q. So up until the point that people are detained,
25 including the defendant, body cams would have been on and we

1 would have seen that?

2 A. Yeah. So everyone would have been detained. A search
3 would have been -- a search would have been -- a search as
4 in like for dangers, a protective sweep would have been
5 done, at which point an evaluation would have taken place,
6 are we safe, do we have control of it? Yes. At which point
7 we announce, all right, body cams can go off and we can all
8 shut off our body cameras at roughly the same time.

9 Q. So a decision to turn off the body cams was made?

10 A. Yes.

11 Q. Is that decision made by each individual officer or is
12 the supervising officer giving an order to do that?

13 A. So our officers know the policy, so if they're following
14 policy they can shut it off. But in these situations we
15 typically leave it to a supervisor to make a decision to
16 shut off video cameras.

17 Q. Okay. So I don't want to belabor this too much but --

18 A. Yeah.

19 Q. -- when officers entered with guns drawn, their body
20 cameras would have been on?

21 A. Yes.

22 Q. And if Mr. Gomez was arrested in the lobby area that
23 would be seen on the body cam?

24 A. Correct. Could I -- one point of clarification?

25 St. Paul Police are the only group that I know of

1 in this group that would have body cameras. Ramsey County
2 side did not. And there's some other agencies, like
3 Maplewood, Mounds View and I don't recall if they have body
4 cameras or not.

5 Q. Okay. But somebody had a body cam?

6 A. Yes. Including myself.

7 Q. Okay.

8 A. And that's why -- yep.

9 Q. Okay. In any event, you never administered a *Miranda*
10 warning to the defendant while at the body shop, right?

11 A. Yes.

12 Q. Or the car repair shop?

13 A. That is correct.

14 Q. Now, you said that you didn't feel it was necessary
15 because the defendant was volunteering statements in hope of
16 getting favorable treatment from law enforcement?

17 A. Correct.

18 Q. But it wasn't a one-sided conversation in that Mr. Gomez
19 wasn't just talking, he was responding to questions made by
20 you, right?

21 A. I would argue with the word questions, maybe more
22 clarifications. Because of my training and experience I
23 knew the situation, that he was providing information, yet
24 he was in handcuffs. So I know I'm not going to ask him
25 about his criminal activity leading up to, like, with the

1 narcotics. I -- that wasn't in my head.

2 Q. But you wanted to know about these guns that he was
3 leading you on about, right?

4 A. Yeah. When he -- when he told me about guns and that he
5 could get them, we need to do some -- we need to -- I need
6 some clarifying questions or I need to clarify, like, what
7 are we talking about? Are we talking about, again, here at
8 this location? Are you talking somewhere else like another
9 city, state. General. I'm trying to get a very high level,
10 general understanding of what he's talking about.

11 Q. Right. So and to do that you're asking him questions?

12 A. Yeah. I guess I'm saying I'm clarifying what he's --
13 you know, what he's saying.

14 Q. And that conversation was not recorded, right?

15 A. No, it's not.

16 Q. The following day -- oh, excuse me, before I leave the
17 14th, the defendant told you that he had a drug problem,
18 right?

19 A. On the following day. I think it's in my report, yes.

20 Q. Well, didn't he tell you the day of the arrest that he
21 had a drug problem when you were talking to him?

22 A. If I put it in my notes here. Can I look at --

23 Q. Sure.

24 A. Okay. So I'm not disputing -- where are you seeing
25 this?

1 Q. Oh, I'm not citing a specific sentence.

2 A. Oh.

3 Q. I just want to know, did the defendant -- did defendant
4 tell you or not that he had a drug problem specifically a
5 methamphetamine problem?

6 A. So if it's -- if it's not in my report, I mean, in what
7 I'm using to recall my memory, I don't recall him telling me
8 that.

9 I don't think it would have been part of what I
10 was trying to get at with clarifying his situation.

11 Q. So when he -- when you and -- is it Sergeant Ferrian?

12 A. Officer -- or deputy. Deputy.

13 Q. Deputy Ferrian appeared, was it at the Ramsey County --

14 A. Ramsey County Jail.

15 Q. Mr. Gomez didn't show any signs of drug withdrawal?

16 A. I wouldn't be able to say he did.

17 Q. Well, you've seen people going through drug withdrawal,
18 haven't you?

19 A. You know what, to be fair with you, I think you'd have
20 define that a little better because I've seen people who use
21 narcotics maybe haven't used narcotics. I don't know what
22 you mean by withdrawal. Like a clinical setting, like --

23 Q. Well, I think it's best, let me just stick with the
24 defendant.

25 A. Yeah.

1 Q. Did he seem in distress?

2 A. No.

3 Q. And I think you said he seemed normal, relaxed?

4 A. For what I understood him to be, like his baseline, I
5 thought so.

6 Q. Now, with respect to your Spanish, I mean, I respect
7 your life history but you're not a certified interpreter?

8 A. No.

9 Q. And you wouldn't dare do what this interpreter is doing
10 right now, would you?

11 A. No.

12 Q. Was all of the conversation between law enforcement and
13 the defendant on March 15th recorded?

14 A. Likely the only things that were not recorded were the
15 hellos, how ya doing, goodbyes, that's it. Yes.

16 So probably to your point is, yes, everything was
17 recorded.

18 Q. And the Exhibit 4 is going to contain both the
19 questioning of the defendant by you before Deputy Ferrian
20 intervened and asked you to ask more questions and also the
21 questions you asked on behalf of Deputy Ferrian?

22 A. Yes. Deputy Ferrian was the case agent so everything
23 was -- it was his case and I was helping him with his
24 questioning.

25 MR. O'BRIEN: Can I have just a second, Your

1 Honor?

2 THE COURT: Yes.

3 BY MR. O'BRIEN:

4 Q. You wouldn't -- well, I don't know. Would you take a
5 statement from somebody who you thought was going through
6 drug withdrawal?

7 A. So the only problem I'm having with that question, I
8 don't -- like, if I'm in a hospital and somebody's
9 convulsing, clearly not. If someone just hasn't used,
10 whether it's alcohol or drugs or they were high at that
11 time, would you consider that withdrawal? Is that what
12 you're asking?

13 So I'm a little confused at what -- because as I
14 understood from the statement I took from him, he used
15 methamphetamine but because he's been in jail for at least a
16 day, almost 24 hours, he wouldn't have access to -- well, I
17 shouldn't -- well, I don't know that he would have had
18 access to methamphetamine.

19 Q. Okay. When the defendant approached you or asked, I
20 think it was Sergeant Lackner -- when Lackner told you that
21 the defendant wanted to talk to you, that's when this talk
22 about the firearms that he allegedly knew about took place,
23 right?

24 A. Correct.

25 Q. But you had talked to the defendant prior to that,

1 right?

2 A. He had been told, yeah, that he's under arrest or
3 whatever the statement was. I don't remember the exact
4 words so it was just that he was going to go to jail for
5 narcotics.

6 Q. You did talk to all of the people that were arrested at
7 the car garage, right?

8 A. I am sure I interacted with them. I don't -- I mean, I
9 don't know how far you want me to, like --

10 Q. Well, did you ever find out what they were doing there?

11 A. I don't believe I talked to them about that.

12 Q. Did any officers talk to them?

13 A. I don't recall.

14 Q. So they were handcuffed?

15 A. Yes.

16 Q. And at some point they were unhandcuffed?

17 A. Correct.

18 Q. And you're saying there was no conversation?

19 A. No. I don't know. I wouldn't have done it. So I don't
20 know. Any interactions would have been in passing, as I
21 recall.

22 Q. Is it true that -- well, you know when the defendant was
23 arrested, correct?

24 A. Yes.

25 Q. And you had a talk with him before the talk about the

1 firearms, right?

2 You just mentioned that it was very short. You
3 said, you're under arrest --

4 A. Something to the extent that he was under arrest so that
5 he would understand what the situation was.

6 Q. Did he tell you that 15 minutes before the police came
7 that he smoked methamphetamine?

8 A. Not that I recall.

9 Q. Okay.

10 MR. O'BRIEN: No further questions.

11 THE COURT: Okay. Thank you, counsel.

12 Mr. Hollenhorst?

13 MR. HOLLENHORST: Just a couple questions.

14 **REDIRECT EXAMINATION**

15 BY MR. HOLLENHORST:

16 Q. How much time passed from the time of that initial
17 contact you had with the defendant until the second contact
18 you had with the defendant?

19 A. I would guess anywhere from three to five minutes.

20 Q. Okay. And the other point here is when the officers
21 found something after saying camera, isn't it true that
22 Officers Johnson and Leighton told you that they had just
23 found firearms?

24 A. Yes.

25 Q. Okay. So clearly firearms had been located and observed

1 by police officers at the scene prior to the application of
2 the second warrant, correct?

3 A. Correct.

4 Q. Do you have any reason to doubt Officer Johnson and
5 Leighton's statements to you that they had found firearms?

6 A. No.

7 Q. And it was your understanding that they had found those
8 firearms in the cabinet we've been talking about?

9 A. Correct.

10 Q. And it's also your understanding that that cabinet would
11 have been something permissible under the first warrant, in
12 other words, to enter to search for tracking devices?

13 A. Correct.

14 Q. And the police never found the tracking devices, did
15 they?

16 A. Correct. They did not.

17 Q. So at this point, I don't know how far along their
18 search was, but they clearly were still looking for tracking
19 devices when they found those firearms, correct?

20 A. Correct.

21 MR. HOLLENHORST: That's all I have, Your Honor.

22 THE COURT: Mr. O'Brien?

23 **RECROSS-EXAMINATION**

24 BY MR. O'BRIEN:

25 Q. Would you agree that if the officers told you that they

1 found firearms that means that they had to have opened the
2 bag where the firearms were in?

3 A. I don't know.

4 Q. But you will agree that the bag is not transparent?

5 A. Yes.

6 MR. O'BRIEN: All right. Nothing further.

7 THE COURT: Anything else from government?

8 MR. HOLLENHORST: No, Your Honor.

9 THE COURT: Okay. Okay. Sergeant, thank you for
10 testifying. You may step down.

11 MR. HOLLENHORST: And, Your Honor, this witness is
12 permanently excused?

13 THE COURT: Yes.

14 MR. HOLLENHORST: Thank you.

15 (Off-the-record discussion.)

16 THE COURT: Well, actually why don't you hang on
17 just in case.

18 MR. HOLLENHORST: Okay.

19 MR. O'BRIEN: Your Honor, the defendant would like
20 to testify.

21 THE COURT: Okay. Let's make sure Mr. Hollenhorst
22 has rested first.

23 MR. HOLLENHORST: Well, Your Honor --

24 THE INTERPRETER: Your Honor, the interpreter
25 would like just a short break.

1 THE COURT: Okay.

2 THE INTERPRETER: If I could.

3 THE COURT: Let's see, of course. Let's just
4 figure out how long we should take a break.

5 I've got a bench meeting at 2:00. So
6 theoretically we could take a relatively brief break or we
7 can take a half an hour lunch break. What do you guys
8 think?

9 MR. O'BRIEN: I think the testimony's going to be
10 brief.

11 THE INTERPRETER: I think just a brief break would
12 be better for the interpreter.

13 MR. HOLLENHORST: Your Honor, and also it appears
14 that it is not going to be contested. I don't want to speak
15 for Mr. O'Brien, that the police actually found firearms
16 that -- at the scene, so that would obviate the need for me
17 to call another witness.

18 MR. O'BRIEN: Yes. And defense will stipulate to
19 that, Your Honor.

20 MR. HOLLENHORST: So, in other words, Your
21 Honor --

22 THE COURT: Well, what about the nature of the bag
23 in the cabinet?

24 MR. HOLLENHORST: Well, the -- I think the
25 agreement is that when the -- when the police shouted

1 "camera" they actually had entered the cabinet and found
2 firearms, whether they were in a bag or not.

3 Our theory in the case is that the police could
4 search anywhere, including closed containers, for those
5 tracking devices.

6 So it's really kind of irrelevant whether they
7 were in a bag or not in a bag, in the government's view.

8 THE COURT: Well, I mean, it's your prerogative if
9 you don't want to develop that aspect of the testimony for
10 better or for worse.

11 MR. HOLLENHORST: Well, my understanding, though,
12 is the defense is agreeing that the police did, in fact,
13 find firearms in that cabinet before they applied for a
14 search for -- to seize them.

15 MR. O'BRIEN: That's right.

16 THE COURT: Yeah. I have --

17 MR. HOLLENHORST: But at the time they opened the
18 cabinet they saw the firearms.

19 MR. O'BRIEN: No.

20 THE COURT: No. Not that part.

21 MR. HOLLENHORST: Yeah. At the time they opened
22 the cabinet and whatever they did in the cabinet, they found
23 the firearms, they saw the firearms and then they got a
24 warrant.

25 THE COURT: Well, the "saw" the firearm is the

1 tricky part.

2 Theoretically there could be an argument that,
3 well, inside the duffel bag, unless it was shaped by a
4 firearm or, you know, it was partly unzipped, there is an
5 argument, I would imagine, that defense will say, well,
6 it's, you know -- if you couldn't see it, you need some
7 extra layer. I don't know what their argument would be
8 exactly but something to that effect.

9 If you're okay with saying that, yes, the guns
10 were found in the cabinet. If defense is willing to
11 stipulate that and leave ambiguous whether it was visible,
12 you know, once the cabinet was open or not, the guns
13 themselves were visible, whether opaque or transparent bag,
14 whether you could see, even if it were opaque, if it was
15 tight enough you could see the outline of a magazine or a
16 barrel, what have you, that's your decision on how you want
17 to do on that, how much you want to or not want to develop
18 that aspect of the testimony.

19 MR. HOLLENHORST: Your Honor, counsel during the
20 break will confer on this precise point and then we'll get
21 back to the Court on that.

22 THE COURT: You folks know this area in all candor
23 better that be I do so, you know, I'm sure -- well, why
24 don't you confer and tell me how you want to do that.

25 MR. HOLLENHORST: Thank you, Your Honor.

1 THE COURT: Well, I think that's the point.

2 I mean, I would be somewhat surprised, I don't
3 think the defense is making the argument that, oh, there
4 were no gun -- firearms there, something like that. And I
5 don't think they're even disputing --

6 THE INTERPRETER: I'm sorry, Your Honor.

7 Could you please repeat that last comment of
8 yours. I apologize.

9 THE COURT: I said that I can't assume what
10 exactly what the defendant would argue.

11 However, it'd be somewhat unexpected if the
12 argument were somehow that there were no firearms found
13 there and, in fact, there's probably an agreement the
14 firearms when they were found were in that cabinet and that
15 the issue that I was raising is, well, there could be an
16 issue of that cabinet, was it open or not already, was it
17 closed?

18 Then even if it's closed, when you -- the duffel
19 bag, could you see the guns in plain view at that point or
20 were they zipped up or what have you?

21 And were the law lies and exactly where the case
22 law lies is obviously something I'll be seeking more in
23 briefs. But as far as development of the testimony, you
24 know, I'll leave it obviously to experienced counsel on both
25 sides to figure out how they want to approach that.

1 MR. HOLLENHORST: Thank you, Your Honor.

2 MR. O'BRIEN: Thank you.

3 THE COURT: Okay. Thank you. All right.

4 Let's -- 15 minutes?

5 THE INTERPRETER: Your Honor, can -- I don't
6 remember how much time I was asked to set aside for this
7 hearing, but I don't think I expected it to be quite this
8 long and I'm supposed to be in state court for a zoom
9 hearing at 1:00.

10 THE COURT: Oh.

11 THE INTERPRETER: So maybe can the break be super
12 short or can we just come back later after, because it's
13 just a short zoom hearing.

14 And I think maybe one of my lawyer friends who has
15 an office nearby will let me go use his office.

16 THE COURT: Well, if it's -- I think you requested
17 the break so if you think it can be a ten-minute break?

18 THE INTERPRETER: Five minutes.

19 THE COURT: Five minute. Deputy -- Marshals, is
20 that -- five minutes?

21 MARSHAL: That's fine.

22 THE COURT: All right. Five-minute break, folks.

23 THE INTERPRETER: Thank you.

24 (Recess at 12:21 p.m.)

25 (Reconvene at 12:30 p.m.)

1 THE COURT: So back on the record, we had to take
2 a brief break.

3 So I understand that Mr. Gomez might want to
4 testify. But, you know, the more I think about it, it
5 seems to me I might want to have some developing testimony
6 on that cabinet on who saw what. Otherwise I'm assuming all
7 this other stuff and it just makes our job a lot more
8 difficult.

9 MR. HOLLENHORST: Okay. Your Honor, the parties
10 have discussed this issue.

11 The government's position is for briefing purposes
12 we're going to assume that the weapons were in a bag in a
13 cabinet and that the police then opened the bag saw the
14 weapons there.

15 And so we are going to brief that it's legally
16 irrelevant --

17 THE COURT: Okay.

18 MR. HOLLENHORST: -- whether or not they were --
19 it was a see-through bag or an opaque bag or whether the
20 weapons were in plain view or not.

21 THE COURT: Can I ask to clarify something so that
22 -- I don't care what, I just want the facts to play out and
23 we'll make the legal call.

24 Are you willing to stipulate that the bags were in
25 an opaque bag and that all law enforcement officers could

1 not tell if there were or were not guns in that bag? Were
2 you willing to stipulate to that.

3 MR. HOLLENHORST: Yes, Your Honor. And they were
4 not able to tell whether or not there was a tracking device
5 in them, either.

6 MR. O'BRIEN: They couldn't tell what if anything
7 was inside the bags.

8 MR. HOLLENHORST: So the legal issue here is they
9 had the authority to search anywhere and everywhere,
10 including closed containers and bags. They opened up the
11 bag, they found weapons.

12 And we will concede these points that the defense
13 has essentially made concerning whether these bags were --

14 THE COURT: Well, what about the thoughts of the
15 officers? What was in their head when they went ahead and
16 opened the bag?

17 MR. HOLLENHORST: Not relevant.

18 THE COURT: Is the defendant willing to stipulate
19 that, in fact, they hadn't found the tracking device and was
20 still looking for the tracking device?

21 MR. HOLLENHORST: I think the testimony was
22 clear --

23 THE COURT: Hold on.

24 MR. HOLLENHORST: I'm sorry.

25 THE COURT: That's a question for defense.

1 Do you hear what I'm asking? It seems to me there
2 could be a -- you know, if -- I mean, the reality is it
3 might be pretty straight forward. The cops will probably --
4 or the officers will probably say, well, we're still looking
5 for the tracking device but we don't know. That's something
6 I want to ask of Mr. O'Brien.

7 It seems like the government's willing to say,
8 yeah, the officers could not tell the guns are not in there
9 in a zip, closed and opaque bag, you couldn't see through
10 it.

11 But the other issue is, well, were the officers
12 still just looking for -- when they were -- when they opened
13 the bag at some point under that stip -- you know, under
14 that stipulated fact, when they opened the bag were they
15 still looking for the tracking device? We don't know that,
16 do we, unless it's stipulated to.

17 MR. O'BRIEN: My reading of the discovery tells me
18 that the tracking devices were found after the 14th of
19 March. I might be wrong.

20 THE COURT: So my question was, at the time the
21 officers unzipped the bag, presumably, were they still
22 looking for the tracking device? Are you willing to agree
23 to that?

24 MR. O'BRIEN: Yes.

25 THE COURT: Okay. Then I think we're -- just in

1 case, I think I've got everything.

2 MR. HOLLENHORST: And, Your Honor, during the
3 break I did attempt to see if I could put on another witness
4 here. And unfortunately many of them have retired.

5 THE COURT: The stipulation --

6 MR. HOLLENHORST: Okay.

7 THE COURT: -- actually tees that up perfectly.
8 I'm mean, I'm not sure where the law lays, guys, but, you
9 know, that's -- I guess that's where we come in.

10 With that then, government's resting?

11 MR. HOLLENHORST: Yes, Your Honor.

12 THE COURT: One other house cleaning matter. We
13 do need an English interpretation of that Government
14 Exhibit 4, is it?

15 MR. HOLLENHORST: Yes.

16 THE COURT: You'll follow up with that?

17 MR. HOLLENHORST: Yes, we will.

18 There was some debate, however, that whether or
19 not it was necessary -- I mean, if the Court wants it, we're
20 going to give it to the Court. But I'm not so certain that
21 it's contested anything in the tape or that was recorded or
22 am I mistaken there?

23 MR. O'BRIEN: Well, like, what's in Spanish,
24 isn't, I guess, that important, it's how the translation
25 comes out because that's what would be presented to a jury.

1 THE COURT: Yeah, I'd want to see it.

2 MR. HOLLENHORST: Oh. We'll definitely get the
3 transcript.

4 THE COURT: Oh, yeah.

5 MR. HOLLENHORST: The question is whether it's
6 relevant for purposes of the motions hearing?

7 THE COURT: Well --

8 MR. HOLLENHORST: If the Court wants it --

9 THE COURT: Yeah, yeah.

10 MR. HOLLENHORST: Okay. Yes, Your Honor.

11 THE COURT: Just so we can --

12 MR. HOLLENHORST: Yeah. By way of explanation,
13 you probably don't want one, but the -- this thing has been
14 sent off to some far-off place for translation. I have been
15 very adamant with the case agent to get it to me as soon as
16 possible. I will try to get it to the Court as soon as
17 possible.

18 THE COURT: Okay. With that, government -- and I
19 assume, Mr. O'Brien, you're fine once they get it
20 translated, you'll review it and if it's okay they can just
21 submit it to the Court and copy defense, obviously, on it?

22 MR. O'BRIEN: Yes.

23 THE COURT: Okay. All right. Then with that, the
24 government rests?

25 MR. HOLLENHORST: We rest, Your Honor.

1 THE COURT: Okay. Mr. O'Brien?

2 MR. O'BRIEN: Defense calls Santos Gomez Perez.

3 THE COURT: Okay. I can do the inquiry when he's
4 up here.

5 MR. O'BRIEN: Sure.

6 THE COURT: Okay. Come on up.

7 Oh, actually, can he just stay there? Yeah, that
8 would be great. Just go ahead and stay there. Okay.

9 Sir, do you swear to tell the truth, the whole
10 truth and nothing but the truth, sir?

11 THE DEFENDANT: I do. Correct. I swear.

12 THE COURT: Okay. Thank you.

13 And could you state your name for the record,
14 please?

15 THE DEFENDANT: Santos Gomez Perez.

16 THE COURT: And, Mr. O'Brien, you want do an
17 inquiry for me?

18 MR. O'BRIEN: Thank you.

19 **(Santos Gomez Perez)**

20 **EXAMINATION**

21 BY MR. O'BRIEN:

22 Q. Mr. Gomez, of course we're talking about March 14th or
23 2019?

24 THE COURT: We got to do a waiver -- a brief
25 waiver of understanding.

1 BY MR. O'BRIEN:

2 Q. Mr. Gomez, you understand that by giving testimony that
3 you were placed under oath?

4 A. Yes.

5 Q. And you've sworn to tell the truth?

6 A. Correct.

7 Q. And do you understand there are adverse consequences if
8 you do not tell the truth?

9 A. Correct. I understand.

10 Q. Do you understand that what you say can be used against
11 you for the future court proceedings?

12 A. I understand.

13 Q. Whether you tell the truth or whether you lie?

14 A. I understand.

15 THE COURT: I can take it up.

16 You understand you have a right to remain silent
17 and not answer any questions if you want to; is that
18 correct?

19 THE DEFENDANT: Correct. I understand.

20 THE COURT: And are you deciding that you do want
21 to testify here?

22 THE DEFENDANT: Yes.

23 THE COURT: And have you talked about that
24 decision with Mr. O'Brien, your attorney?

25 THE DEFENDANT: Yes.

1 THE COURT: And after that do you still want to
2 testify and address the Court?

3 THE DEFENDANT: Yes.

4 THE COURT: And you understand that after you
5 testify Mr. Hollenhorst will get to cross-examine you?

6 THE DEFENDANT: I understand.

7 THE COURT: And that, in fact, in future
8 proceedings, for example, if -- for example, if you testify
9 that this information can be used for cross-examination and
10 other purposes?

11 THE DEFENDANT: I understand.

12 THE COURT: Okay. And are you hear with a clear
13 head?

14 THE DEFENDANT: No. I've got some troubles with
15 headaches and because of the situation.

16 THE COURT: Are you thinking clearly?

17 THE DEFENDANT: With the troubles I've got with my
18 headache, no, it's not really correct. It is difficult.

19 MR. O'BRIEN: Maybe if I just have a moment, Your
20 Honor?

21 THE COURT: Yes. I mean, is he seeking a
22 competency hearing?

23 (Off-the-record discussion.)

24 THE DEFENDANT: I apologize. I apologize. If
25 you'll give me the chance to calm down a little bit and a

1 little bit later on I'll be more calm.

2 MR. O'BRIEN: I've explained to Mr. Gomez that
3 with respect to this hearing, to this suppression motion, he
4 will not have another chance to testify. I've told him that
5 if he wishes to access his right to trial that he would have
6 the right to testify at trial.

7 THE COURT: How much time are you looking before
8 you're clearheaded?

9 THE DEFENDANT: I have no idea what the procedure
10 is like or how much time I might be able to get, I don't
11 know.

12 THE COURT: No. My question is -- my question
13 related to, I asked you if you were here with a clear head.

14 In other words, earlier in the examination while
15 Mr. O'Brien was defending you in his questioning he was at
16 least implying that there could be an issue of your being
17 under the influence, for example, of meth that affected your
18 ability to give consent and so forth.

19 So what I want to know is you're giving -- you're
20 answering my questions now about whether you understand that
21 you are giving up your right to remain silent that later on
22 that you don't claim that in essence, oh, I wasn't thinking
23 clearly and therefore what I said -- to the extent it may be
24 used against you that, oh, it shouldn't be because my head
25 wasn't clear because the stress or drugs or, you know,

1 alcohol, what have you. Obviously that's what I'm trying to
2 get at.

3 THE DEFENDANT: It's hard for me to explain to you
4 guys. I come back here from Mexico. I apologize. I was
5 beaten up --

6 THE INTERPRETER: But I don't understand what he
7 said before.

8 THE DEFENDANT: I was kidnapped by some police
9 officers in Mexico. They kidnapped me. They beat me up.

10 THE COURT: Okay. Sir.

11 THE DEFENDANT: They put plastic over my head --

12 THE COURT: Sir, do you want to talk to Mr.
13 O'Brien? Because in essence you're giving up your right to
14 be silent by blurting out this information.

15 Do you understand that?

16 (Off-the-record discussion.)

17 THE INTERPRETER: Your Honor, I know that federal
18 court normally trumps state court but I do have a short
19 hearing in state court at 1:00 and if I miss it they will
20 never call me again.

21 THE COURT: Are you supposed to physically be
22 there or?

23 THE INTERPRETER: No, it's a zoom hearing.

24 THE COURT: How long does it take you to set up
25 your zoom?

1 THE INTERPRETER: I mean, if you guys had a
2 computer that I could sit at it's a --

3 THE COURT: What were you intending to do?

4 THE INTERPRETER: It's just I'm interpreting a
5 zoom hearing.

6 THE COURT: No, no. But what if -- you don't have
7 laptop device? You were planning on using one of the
8 court's all along or what?

9 THE INTERPRETER: I'm sorry, Your Honor. I didn't
10 know this hearing was going to be this long. I'm sorry.

11 MR. O'BRIEN: We're done by the way. We rest.

12 THE COURT: Okay. I guess, Mr. Gomez, have you
13 decided you don't want to testify at this time?

14 THE DEFENDANT: Not at this time.

15 THE COURT: Okay. And that's your decision after
16 talking to Mr. O'Brien, is that right?

17 THE DEFENDANT: Correct.

18 THE COURT: Okay. All right.

19 Other than obviously the stress of the moment have
20 you taken any illegal drugs or alcohol or anything that
21 affects your ability to think before this hearing?

22 THE DEFENDANT: No, sir.

23 THE COURT: Only. Very well.

24 Then I respect that decision and thank you,
25 counsel.

1 And with that, are you otherwise resting, defense?

2 MR. O'BRIEN: Yes, Your Honor.

3 THE COURT: Okay. And just clear for the record,
4 obviously to the extent there's any time pressures on the
5 interpreter, we would address that by getting another
6 interpreter and continuing that, and that has no bearing on
7 the Court's analysis.

8 I assume that isn't affecting your decision at
9 this time, Mr. Gomez?

10 THE DEFENDANT: No.

11 THE COURT: Okay. Very well.

12 All right. Anything else from government?

13 MR. HOLLENHORST: Just a briefing schedule, Your
14 Honor.

15 THE COURT: We can go off the record for that,
16 then.

17 MR. HOLLENHORST: Thank you, Your Honor.

18 (Off-the-record discussion.)

19 THE COURT: Okay. For the record, Madam Law
20 Clerk, could you put the dates on the record.

21 THE CLERK: So we'll have a transcript
22 February 18th. Defense brief March 7th, government brief
23 March 22nd.

24 MR. O'BRIEN: Okay.

25 THE COURT: Okay. Thank you. Good luck to both

1 sides, Mr. Gomez (speaking Spanish).

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: All right. We are in recess. Thank
4 you everyone.

5 * * *

6

7 **REPORTER'S CERTIFICATE**

8

9

10 I certify the foregoing pages of typewritten
11 material constitute a full, true and correct transcript of
12 my original stenograph notes, as they purport to contain, of
the proceedings reported by me at the time and place
hereinbefore mentioned.

12

13 /s/Lynne M. Krenz
14 Lynne M. Krenz, RMR, CRR, CRC

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